

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LINDEN GREEN CONDOMINIUM)	
ASSOCIATION,)	
)	
Plaintiff-Counterclaim Defendant,)	
)	C.A. No. N17L-11-116 FWW
)	
v.)	
)	
STEPHANIE M. LARKIN,)	
)	
Defendant-Counterclaim Plaintiff.)	
)	

Submitted: February 25, 2022

Decided: March 31, 2022

**DECISION ON PLAINTIFF-COUNTERCLAIM DEFENDANT LINDEN
GREEN CONDOMINIUM ASSOCIATION'S REQUEST FOR
ATTOTNEY'S FEES AND DEFENDANT-COUNTERCLAIM PLAINTIFF
STEPHANIE M. LARKIN'S REQUEST FOR COSTS**

Frances Gauthier, Esquire, LEGAL SERVICES CORPORATION OF DELAWARE, INC., 100 West 10th St., Suite 203, Wilmington, DE, 19801, Attorney for Counterclaim Plaintiff Stephanie M. Larkin.

Paul E. Bilodeau, Esquire, LOSCO & MARCONI, P.A., 1813 N. Franklin St., P.O. Box 1677, Wilmington, DE, 19899, Attorney for Counterclaim Defendant Linden Green Condominium Association.

WHARTON, J.

This 31st day of March, 2022, upon consideration of Plaintiff Counterclaim Defendant Linden Green Condominium Association's ("Linden Green") Revised Application for Attorney's Fees and Costs,¹ Defendant Counterclaim Plaintiff Stephanie M. Larkin's ("Larkin") Application for Costs on Counterclaim,² Larkin's Objection to Linden Green's Revised Application for Attorney's Fees and Costs,³ and the record in this case, it appears to the Court that:

1. On January 27, 2022 the Court entered its Decision after Trial on Larkin's counterclaim.⁴ The Court had previously resolved Linden Green's original complaint when it granted its motion for summary judgment.⁵ The Decision after Trial also resolved, in part, Linden Green's request for attorney's fee, costs, and pre-judgment interest on its complaint and Larkin's request for attorney's fees and costs on her counterclaim.⁶ In summary, the Court found: (1) for Larkin and against Linden Green in the amount of \$18,840.63 on her counterclaim; (2) Linden Green was entitled attorney's fees, costs, and pre-judgment interest on its complaint, but only as to its complaint; and (3) Larkin was not entitled to attorney's fees but was

¹ D.I. 115.

² D.I. 116.

³ D.I. 117.

⁴ *Linden Green Condominium Association v. Larkin*, 2022 WL 247529 (Del. Super. Ct. Jan. 27, 2022).

⁵ D.I. 64.

⁶ *Linden Green*, at *8.

entitled to costs on her counterclaim, but only on her counterclaim.⁷ The Court then solicited an amended application for attorney's fees and costs from Linden Green limited to those fees and costs related to its successful complaint, and a calculation of pre-judgment interest. The Court also solicited a calculation of costs from Larkin. The Court has considered the parties submissions and awards to Linden Green: (1) attorney's fees of \$34,307; (2) costs of \$1,727.55; and (3) pre-judgment interest/finance charges of \$940.40. The Court awards Larkin costs of \$611.75 and post-judgment interest at the legal rate.

2. This action originated when Linden Green filed a complaint against Larkin alleging she failed to pay liens and assessments against her and her townhouse unit. In response, Larkin answered and counterclaimed *pro se*. After Linden Green filed its answer to the counterclaim, Linden Green then moved for summary judgment on its complaint.⁸ The Court granted that motion on March 11, 2020.⁹ In addition to granting Linden Green summary judgment on its complaint for past due monthly assessments of \$12,504.75 and late fees of \$1,270.00, the Court also granted Linden Green "leave to submit any claim for attorney's fees, costs and applicable finance charges at the conclusion of this litigation."¹⁰ In May 2021,

⁷ *Id.*

⁸ Linden Green's Mot. Summ. J. on Claim, D.I. 52

⁹ D.I. 64.

¹⁰ D.I. 66.

Larkin paid the past due assessments and late fees in full.¹¹ Partial satisfaction of the judgment was entered by the Prothonotary on June 22, 2021¹² pursuant to a power of attorney from Linden Green in which it reserved “the right to pursue further [judgments] against Ms. Larkin...for Court costs, pre and post-judgment finance/interest charges, monthly assessments and late charges owing after July 2021, and such other amounts as may be lawfully owing by Ms. Larkin.”¹³

3. The Court determined that Linden Green is entitled to attorney’s fees on its complaint pursuant to Linden Green’s Code of Regulations and 25 *Del. C.* § 81-316(g) which grants Linden Green “reasonable attorney’s” fees, incurred in the collection of the delinquent assessment by legal proceedings or otherwise[.]”¹⁴ Also, according to 25 *Del. C.* § 81-316(a), Linden Green is entitled to its court costs and reasonable attorney’s fees on any judgment. Furthermore, § 81-316(g) states any judgment originating under this section “must include costs and reasonable attorney’s fees for the prevailing party.” In its post-trial memorandum Linden Green submitted an itemized request for attorney’s fees and costs in the amount of \$116,554.06. That amount represented attorney’s fees and costs for the entire litigation, including Larkin’s counterclaim. The Court did not award attorney’s fees

¹¹ D.I. 95.

¹² D.I. 99.

¹³ D.I. 95.

¹⁴ *Linden Green*, at *7.

and costs defending the counterclaim since such costs and fees are not compelled by statute or regulation. The Court determined that Linden Green is entitled only to attorney's fees and costs related to its original complaint.¹⁵

4. Linden Green also sought pre-judgment interest at the rate of 18% on Larkin's delinquent balances from July 15, 2016 until Linden Green's Council repealed the interest charge on March 1, 2018. Title 25 *Del. C.* § 81-316(g) states, "[u]nless the declaration provides for a different rate of interest, interest on unpaid assessments shall accrue at the rate of the lesser of 18% per annum or the highest rate permitted by law."¹⁶ Pursuant to its declaration and regulations, in May 2009, Linden Green increased the interest rate to 18%.¹⁷ Thus, the Court held Linden Green is entitled to pre-judgment interest at 18% on Larkin's delinquent balances from July 15, 2016, until Linden Green's Council repealed the interest charge on March 1, 2018.¹⁸

5. The Court directed Larkin to submit an appropriate application for costs on her counterclaim consistent with the Court's decision after trial.¹⁹ Her application

¹⁵ *Id.*

¹⁶ 25 *Del. Code* § 81-316(a).

¹⁷ Linden Green's Ans. Mem, at 26, D.I. 106.

¹⁸ *Linden Green*, at *7.

¹⁹ *Id.*, at 8.

requests costs of \$611.75.²⁰ Linden Green has not opposed this amount. Accordingly, Larkin is awarded \$611.75 in costs on her counterclaim.

6. Linden Green now seeks \$54,642.00 in attorney's fees and expenses and \$1,727.55 in costs associated with its complaint in its revised application.²¹ The Court also directed Linden Green to submit a calculation of pre-judgment interest on any delinquencies owed by Larkin from July 15, 2016 to March 1, 2018.²² Linden Green's pre-judgment interest request is \$940.40.²³

7. Larkin has submitted her objections.²⁴ She provides an alternative figure of \$630.55 for pre-judgment interest/finance charges but does not offer a counter-figure for attorney's fees or costs.²⁵ She bases her pre-judgment interest calculation on an application of 18% simple interest to an outstanding assessment balance through February 28, 2018 of \$5,019.75, equaling \$705.85.²⁶ She deducts \$75.30 from that amount because Linden Green repealed the finance charge on February 27th, leaving a total of 630.55.²⁷ Instead of providing a suggested amount of reasonable attorney's fees, Larkin contends generally that attorney's fees and

²⁰ D.I. 116.

²¹ D.I. 115.

²² *Linden Green*, at *8.

²³ D.I. 115.

²⁴ D.I. 117.

²⁵ *Id.*

²⁶ *Id.*, at 4-5.

²⁷ *Id.*, at 5.

costs of \$56,369.55 in order to secure a judgment of \$13,774.75 is unreasonable and unconscionable. She also argues that certain attorney's fees listed in Linden Green's revised request were incurred in litigating the counterclaim.²⁸ Additionally, asks the Court to exclude fees associated with settlement negotiations, what she describes as "day-to-day issues that came up as a result of Ms. Larkin still living in her townhouse condominium after the complaint and counterclaim had been filed," and in litigating an interlocutory appeal she brought after the Court's summary judgment decision.²⁹

8. The Court turns first to the question of pre-judgment interest/finance charges. In his submission, counsel for Linden Green writes, "Regarding pre-judgment interest due Linden Green on balances due from July 15, 2016 through March 1, 2018, I am advised that figure, at 18% simple interest [1.5% monthly] comes to \$940.40."³⁰ Larkin shows outstanding assessments from September 30, 2016 to February 28, 2018 of \$5,019.75.³¹ It appears that Larkin applied the 1.5% monthly finance charge to her outstanding balances and then deducted \$75.30 because the finance charge was repealed on February 27th for a total amount of \$630.55 in finance charges through January 31, 2018.³² Linden Green did not provide a monthly breakdown of its calculation, nor Larkin did explain why she

²⁸ *Id.*

²⁹ *Id.*, at 14.

³⁰ D.I. 115.

³¹ D.I. 117, at 4-5.

³² *Id.*, at 5.

chose to start her calculation on September 30, 2016. However, in its Decision after Trial, the Court began the starting date for pre-judgment interest on July 15, 2016 as shown in Larkin's Linden Green Owner Statement attached to Linden Green's Motion for Summary Judgment on Plaintiff's Complaint.³³ Accordingly, because it encompasses the entire time Larkin was delinquent, the Court accepts Linden Green's calculation.

9. The Owner Statement also shows a finance charge on February 28, 2018 of \$144.79.³⁴ Larkin argues that the finance charge was repealed on February 27th when the late fee was raised \$10 from \$25 to \$35. The minutes from that February 27th Linden Green Council meeting do not identify the effective date of the change.³⁵ Since late fees were effective on the 15th of the month and the change was made on the evening before the next to last day of the billing period, it seems reasonable to conclude that the change was made prospectively. Further supporting that conclusion is the fact that Larkin was not charged the increased late fee for February 2018.³⁶ Thus, the Court will not apply Larkin's requested adjustment and

³³ Pl.'s Mot. Summ. J., Ex. A, D.I. 52. The Owner Statement attached to Larkin's Objections to Linden Green's Revised Application for Attorney's Fees and Costs also shows she stopped paying assessments on July 15, 2016. D.I. 117.

³⁴ *Id.*

³⁵ D.I. 117, at Ex. B.

³⁶ *Id.*

orders Larkin to pay pre-judgment interest to Linden Green in the amount of \$940.40.

10. Turning to attorney's fees, the Court has carefully reviewed Linden Green's revised application and Larkin's objections. Two things are apparent. First, and most obviously, the parties could have, and perhaps should have, settled. Both parties had meritorious claims. Linden Green was entitled to payment of the assessments that Larkin unjustifiably withheld, and Larkin was entitled to compensation from Linden Green because of the water damage to her unit. It appears that Linden Green was amenable to settlement. In a joint letter to the Court dated July 19, 2019 requesting a trial continuance, counsel reported, "Linden Green has agreed to make structural repairs to the foundation so it is watertight...Once the repairs are successfully completed, and the foundation is deemed watertight, the parties will be able to assess their respective damages and commence a more informed dialogue that may lead to the resolution of all claims."³⁷ On October 31, 2019, again in a joint letter, the Court was advised "...Linden Green has determined the scope of work necessary to remedy the foundation issues, and earlier today Ms. Larkin met with Linden Green's contractors to schedule the repairs...Once that [the successful completion of the repairs] occurs, the parties will be able to reassess their

³⁷ D.I. 40.

respective claims, and participate in a meaningful dialogue and/or ADR.”³⁸ Unfortunately, the repairs did not take place, because, according to Linden Green’s counsel, Larkin lodged a number of objections and requests before permitting any work to be done.³⁹ Both the complaint and counterclaim were pending when the case was mediated on March 10, 2020.⁴⁰ Mediation failed to resolve the claims.⁴¹ While the Court was not privy to the parties’ negotiating positions, it is fair to infer that failure was due, at least in part, to Larkin’s wildly unrealistic view of her damages as demonstrated by her post-trial submission in which she sought \$419,757.56 in special and punitive damages, \$113,036.31 in attorney’s fees, and \$919.00 in costs.⁴²

11. The second obvious point is that, given Linden Green’s contractual and statutory right to attorney’s fees, Larkin’s litigation strategy heedlessly and unnecessarily drove up Linden Green’s attorney’s fees and costs as well as her own. Combined, the parties’ attorneys’ fees exceeded \$230,000 on judgments totaling less than \$35,000. If Larkin had paid her assessments as required by law and contract and litigated her grievances with Linden Green separately, she likely could have avoided responsibility for Linden Green’s attorney’s fees entirely. Instead, she

³⁸ D.I. 47.

³⁹ D.I. 48

⁴⁰ D.I. 62.

⁴¹ *Id.*

⁴² D.I. 105.

answered Linden Green's complaint *pro se*, acknowledged that she had not paid her assessments, and counterclaimed.⁴³ Counsel for Linden Green wrote Larkin advising her that her answer did not comport with Superior Court Rules in several material respects.⁴⁴ He also urged her to read *Park Centre Condominium Council v. Epps*, 1997 WL 817875, *2-3 (Del. Super. Ct. May 16, 1997), which held that public policy in Delaware favored unconditional payment of assessment fees regardless of any liability to the homeowner by a condominium association.⁴⁵ In other words, at the very inception of the case, Larkin was made aware of controlling case law adverse to her position. Had she heeded that advice, Linden Green's attorney's fees would have been minimal. Instead, she ignored it and Linden Green was constrained to move for judgment on the pleadings and for default judgment.⁴⁶ Larkin did not appear on the date for which the motion was noticed, and a default judgment was entered against her.⁴⁷

12. Belatedly Larkin engaged counsel, and on May 4, 2018, only four days before a Sheriff's Sale was scheduled to be held, moved to vacate the default judgment and stay the Sheriff's Sale.⁴⁸ The Court stayed the sale at a May 7th

⁴³ Answer and Counterclaim, D.I. 2.

⁴⁴ Mot. for Judg. on Pleadings, Mot. for Default Judg., Ex. B, D.I. 6.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ D.I. 8.

⁴⁸ D.I. 13.

teleconference and directed that Larkin’s motion be presented at a routine motions calendar.⁴⁹ On June 4th, the Court denied the motion without prejudice, but stayed the Sheriff’s Sale for 120 days.⁵⁰ On October 2, 2018, Larkin again moved to vacate the default judgment and also moved to dismiss the complaint.⁵¹ On October 29th, the Court granted the motion to vacate, but denied Larkin’s motion to dismiss.⁵² A Trial Scheduling Order was entered with discovery and motion practice ensuing on both parties claims.⁵³ Ultimately, the Court granted Linden Green summary judgment on its complaint on March 11, 2020.⁵⁴ Larkin unsuccessfully sought an interlocutory appeal of that decision.⁵⁵ In May 2021, Larkin paid her unpaid monthly assessments and late fees in full, and on June 1, 2021, the judgment against her was partially satisfied. Save for litigating attorney’s fees, pre-judgment interest and costs, the partial satisfaction of the judgment closed matters related to Linden Green’s complaint. Thus, the record is replete with opportunities, had Larkin taken advantage of any one of them, to do what she eventually did – pay her assessments – and mitigate her liability for Linden Green’s attorney’s fees.

⁴⁹ D.I. 16.

⁵⁰ D.I. 19.

⁵¹ D.I. 20.

⁵² D.I. 24.

⁵³ D.I. 31.

⁵⁴ D.I. 64.

⁵⁵ D.I. 83.

13. Linden Green's revised request for attorney's fees attaches a printout of fees, expenses, and costs incurred in the proceeding.⁵⁶ The revised application includes attorney time, expenses, and costs related to: (1) prosecution of Linden Green's complaint; (2) defending Larkin's motions to vacate judgment and dismiss the complaint; (3) addressing Larkin's demands for pool privileges revoked for non-payment of assessments; (4) defending Larkin's Motion for Emergency Relief for pool privileges; (5) addressing Larkin's ADA accommodation claim for parking privileges lost due to non-payment of assessments; (6) engaging in settlement negotiations regarding all claims including attending mediation; (7) beginning in July 2019, attempting to fulfill Linden Green's commitments made in the parties' joint continuance request regarding repairs to Larkin's unit; (8) defending Larkin's interlocutory appeal; and (9) negotiating a partial payoff of Linden Green's judgment and then, partially satisfying that judgment.⁵⁷ Linden Green seeks \$52,257.00 in fees, \$2,385.00 in expenses, and \$1,717.55 in costs.⁵⁸

14. Specifically, Larkin argues that she should not be obligated to pay attorney's fees related to her successful motions to stay the Sheriff's Sale and vacate the default judgment, her interlocutory appeal, settlement negotiations, "day to day" issues such ADA parking accommodations, pool passes, pool access, etc., and her

⁵⁶ Ex. A, D.I. 115.

⁵⁷ *Id.*

⁵⁸ *Id.*

unsuccessful emergency motion related to the pool.⁵⁹ She also argues that Linden Green did not accurately apportion the time attributable to the claim and counterclaim between July 3, 2019 and July 29, 2019 when the parties coordinated an expert inspection of Larkin's property to confirm the leaky foundation was the source of Larkin's interior damages, and between February 2, 2020 and February 29, 2020 in preparing a joint pre-trial stipulation on both claims.⁶⁰ Finally, she argues generally that the \$56,369.55 request for attorney's fees and costs is unreasonable and unconscionable in light of the judgment of \$13,744.75.⁶¹

15. In considering the reasonableness of an application for attorney's fees and expenses, the Court is informed by the Delaware Lawyers' Rules of Professional Conduct ("DLRPC") Rule 1.5(a), and relevant case law.⁶² Rule 1.5(a)(1) states that a court shall consider "the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly." Rule 1.5(a)(4) states that the court shall consider "the amount involved, and the results obtained." Other factors listed in Rule 1.5(a) are either inapplicable to this case or require information not available to the Court. The court also should consider

⁵⁹ D.I. 117.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Mahani v. EDIX Media Group, Inc.*, 935 A.2d 242, 247 (Del. 2007). *See, also, Superfine Lane Owners' Ass'n v. Haronis*, 2020 WL 509686 (Del. Super. Ct. Dec. 28, 2020).

whether the number of hours devoted to the litigation was ““excessive, redundant, duplicative, or otherwise unnecessary.””⁶³

16. The Court begins its review of the revised application by noting that the billing rate of \$250 per hour is more than fair, the hours billed are not excessive for the amount of work required, and all of the items billed generally relate the case. In considering Larkin’s specific objections, the Court makes the following findings:

(a) Larkin is responsible for Linden Green’s requested attorney’s fees incurred litigating her motions to stay the Sheriff’s Sale and to vacate the default judgment. While Larkin ultimately prevailed on the motions, Linden Green had substantial bases to oppose them, and more importantly, litigating the motions was necessary, only because Larkin failed to properly answer the complaint and to appear for the hearing on Linden Green’s motion for default judgment.

(b) Larkin is responsible for Linden Green’s requested attorney’s fees litigating her interlocutory appeal. These fees are directly related to Linden Green’s need to defend its successful motion for summary judgment on its complaint from interlocutory review. Moreover, it was Larkin’s unsuccessful attempt to seek interlocutory review that caused these fees to be incurred.

⁶³ *Mahani*, at 247-48 (quoting *All Pro Maids, Inc. v. Layton*, 2004 WL 3029869, *5 (Del. Ch. Dec. 27, 2004)).

(c) Larkin is responsible for Linden Green's requested attorney's fees incurred in settlement negotiations. The Court appreciates that settlement negotiations included discussions of Larkin's counterclaim, but the two claims were inextricably intertwined for settlement purposes. Any attempt to separate out negotiations solely related to Linden Green's complaint necessarily would be arbitrary. Moreover, attorney's fees related to settlement negotiations were incurred in connection with the collection of Larkin's delinquent assessments

(d) Larkin is responsible for Linden Green's requested attorney's fees incurred in addressing what Larkin inaccurately describes as "day to day" issues such as pool usage and parking. All of these issues are directly related to Larkin's failure to pay her assessments and Linden Green's efforts to collect them. If fact, her Motion for Emergency Relief necessitated the Court's intervention, and as such, was directly related to Linden Green's complaint.

(e) Larkin is entitled to a reduction of her liability for Linden Green's requested attorney's fees incurred from July 3, 2019 through July 29, 2019. Specifically, the revised application requests fees of \$1,200 between July 19th and July 29th, almost all of which related to a joint continuance request includes one entry on July 26th regarding the scope of work related to Larkin's counterclaim. The Court reduces Larkin's responsibility for fees incurred from July 19th to July 29th by

\$950 to \$250. The Court finds no basis to reduce Larkin's liability for fees incurred between July 3rd through and July 18th.

(f) Larkin is entitled to a reduction in her liability for Linden Green's requested attorney's fees incurred from February 2, 2020 to February 29, 2020. The revised application requests fees of \$18,383, primarily for preparing the pretrial stipulation, and preparing for mediation and trial. The Court appreciates that Linden Green has already made some adjustments based on the Court's Decision after Trial but finds that an additional reduction of \$12,000 would more appropriately apportion the fees between the complaint and the counterclaim.

(g) Although not requested by Larkin, the Court finds that she is entitled to an additional reduction in her liability for Linden Green's requested fees incurred from July 30, 2019 to January 6, 2020. The revised request seeks fees of \$5,114, much of which relate to Linden Green's attempts to have remediation work performed at Larkin's unit. The Court finds a reduction of \$5,000 to be appropriate.

17. Applying the above deductions, amounting to \$17,950, to Linden Green's revised request for attorney's fees leaves a balance of \$34,307. This reduction takes much of the force out of Larkin's argument that Linden Green's request is unreasonable and unconscionable. Further reducing her argument's force is the fact that Larkin herself requested \$113,036.31 in attorney's fees to litigate the entire case. Clearly, Linden Green's attorney's fees were in line Larkin's.

18. The Court finds that an award of attorney's fees to Linden Green in the amount of \$34,307 to be reasonable and comport with the relevant factors listed in DLRPC Rule 1.5(a). Further, the primary reason Linden Green's fees are what they are is because Larkin adopted a litigation strategy that generated them.

THEREFORE, the Court awards Plaintiff-Counterclaim Defendant Linden Green Condominium Association \$34,307 in attorney's fees, together with \$1,727.55 in costs and \$940.40 in pre-judgment interest.

The Court awards Defendant-Counterclaim Plaintiff Stephanie M. Larkin \$611.75 in costs.

A separate Order for Entry of Judgment will be issued this date.

IT IS SO ORDERED.

/s/ Ferris W. Wharton
Ferris W. Wharton, J.